

COMMISSION MEETING
May 10, 2002
MINUTES

1. Call to order and roll call

Commissioners present: Commissioner Burrows, Fraker, Hartley, Micuda, Peterson, Robinson

Commissioners absent: Commissioner Hale

Staff Present: Executive Director, Jerome Davis, Barry Levitch, Pam Ulbrich, Richard Mars, Dirk S. Vandenberg, Sr., Michael Francis, Jason Aanderud, Maggie Vazquez, Carl Martin, Dave Colvin, Alan Pugh, Robert Tolton, Hugo Pulido, and Assistant Attorney General Blair Driggs

Chairman Hartley introduced Commissioner Mike Fraker and Commissioner Jack Peterson. Commissioner Fraker replaced Commissioner Tennenbaum whose term had expired on the Commission and Commissioner Peterson replaced Commissioner Silva for health reasons. Commissioner Fraker has been in the industry for 35 years and is the owner of Patriot Pest Control. Commissioner Fraker would like to pay back the industry and better the services. Commissioner Peterson is with the Arizona Department of Agriculture and it is an honor for him to be on the Commission. Chairman Hartley gave Kudos to Commissioners Tennenbaum and Silva.

II. Approval of May 2002 minutes TAB 1

MOTION: To approve May 2002 minutes, and seconded.

VOTE: 6 - 0 Motion carried.

III. Call to the public (Each speaker limited to five minutes)

Michael Gibson - QP application, classes in pest control, worked at Glendale Community College in Aquatics, 15 years in the agriculture department, landscaping work until 1991, gardening services until 1987 to 2001, would like his experience to count. Would like a QP for Weed and Turf & Ornamental.

John H. Harper - WT Jenkins, Inc. (30 years) landscaping, has an AE@license, his QP left to do, and Mr. Harper holds the Temporary QP, does not have two years experience and would like for it to count.

IV. Correspondence with Commissioners

None

5. Scheduling of future meetings/agenda items

June 14, 2002Scottsdale, AZ
July 12, 2002 Scottsdale, AZ
August 9, 2002..... Scottsdale, AZ

Chairman Hartley - Summer meeting in Flagstaff, what are the requirements to hold out of town. Commissioner Micuda has a concern over lack of attendance in meetings out of town because nobody shows up and the costs involved. This is his personal feeling, if people showed up for the meetings. This is a lot of money to spend. Chairman Hartley - we will get complaints if we do not move around. Commissioner Micuda needs assurance that attendance will improve. Tucson has good attendance. Commissioner Burrows would like to know what type of notice is given beforehand. Jerome Davis - stated SPCC advertises in the newspaper, web site and fliers. Commissioner Robinson stated meetings are scheduled beyond three months, everyone knows, no excuses, and do a schedule of locations for twelve months and put it on the web. Commissioner Peterson would like for a schedule to be made up for the next meeting. Commissioner Hartley would like to do a meeting in the fall for Tucson. Commissioner Burrows will be out of town for the June meeting.

VI. Consent Agenda.

Items will be read and voted on in one group excluding those pulled for discussion.

A. Applications for Business License

- 1. Boling, Mark E. dba Essential Termite & Pest Control (Activating Qualifying Party for existing business license in AE® Weed Control) TAB 2**
- 2. Berg, Dennis Lloyd dba Landscaping by Northwest (Activating Qualifying Party for new business license in AE® Weed Control)TAB 3**
- 3. Johnson, Adam D. dba Truguard Pest Control (Activating Qualifying Party**

for new business license in AB® General Pest)TAB 4

- 4. Saline, Donald V. dba Saline Pest Management (SPM) (Activating Qualifying Party for new business license in AB® General Pest)TAB 5

B. Applicants for QP Testing

- 1. Arp, Nathan W. AB® (General Pest) TAB 6
- 2. BeeBe, John Nelson AB® (General Pest) TAB 7
- 3. Berryhill, Martin E. AB, C & E® (General Pest, Wood Destroying Organisms & Weed Control)TAB 8
- 4. Herity, John M. AB® (General Pest) TAB 9
- 5. Hicks, Trent Larry AB & C® (General Pest & Wood Destroying Organisms) TAB 10
- 6. Horrocks, Billy E. AB & C® (General Pest & Wood Destroying Organisms)TAB 11
- 7. Melendez, James R. AB & C® (General Pest & Wood Destroying Organisms) TAB 12
Pulled

*MOTION: To Deny by Commissioner Peterson
No Second*

VOTE: Motion fails for a lack of a second.

*MOTION: To Deny by Commissioner Burrows
Seconded by Commissioner Peterson*

VOTE: Motion fails for lack of votes.

*MOTION: To approve AB@category by Commissioner Micuda
Seconded by Commissioner Robinson*

VOTE: 4 - 2 Motion carried.

1. Andrew Asman III - Case # 2001-285 TAB 24

Pretreatment - A sufficient quantity of termiticide not applied to meet State and product label requirements.

Pulled

Proposed Resolution:

1. That the applicator Andrew Asman III, Certification # 970985 BCE be issued an ADMINISTRATIVE WARNING for violation of A.A.C. R4-29-402.

2. That the applicator Andrew Asman III, Certification # 970985 BCE be issued a civil penalty in the amount of \$1000.00 for violation of A.A.C. R4-29-402.

NOTE: The applicator, Andrew Asman III is requesting payments in the amount of \$250.00 per month for four (4) months.

*MOTION: To approve by Commissioner Peterson
Seconded by Commissioner Burrows*

VOTE: 6 - 0 Motion carried.

2. Burr, BD Corp. DBA Burr Exterminating - Case # 2001-355 TAB 25
Application of Termiticide

Proposed Resolution:

1. That the Business License # C 4044 BCDE, Burr, BD Corp. DBA Burr Exterminating be issued an Administrative Warning for violation of A.R.S. ' 32-2325 (5) Unlawful Acts.

2. That the Business License # C 4044 BCDE, Burr, BD Corp. DBA Burr Exterminating be issued a De-minimis Warning for violation of A.A.C. R4-29-315 (Items required on a service vehicle.)

3. Carter Weed Control - Case # 2001-339
. TAB 26 Misuse (Application of Herbicides)

Pulled

Proposed Resolution:

The Complaint contains allegations of violations resulting from the application of Herbicides. Suspected violations were A.A.C. R4-29-301 (A) (Misuse).

A Review of the investigation and related documents indicate that there was damage to a crop area, however, a lack of documentation to prove that the damage was a result of an improper application on the part of the licensee.

Due to the findings the following is recommended as resolution to the Complaint:

That the complaint be dismissed.

*MOTION: To approve by Commissioner Robinson
Seconded by Commissioner Burrows*

VOTE: 5 - 1 Motion carried.

4. Gardenscapes - Case # 2001-293 TAB 27
Unlicensed Activity

Pulled

Proposed Resolution:

1. That the Business Gardenscapes, be issued a civil penalty in the amount of \$500.00 for violation of A.R.S. ' 32-2325 (1). (Unlicensed Activity.)

*MOTION: To approve by Commissioner Burrows
Seconded by Commissioner Micuda*

VOTE: 6 - 0 Motion carried.

5. Matrix Pest and Termite Elimination - Case # 2001-319 TAB 28
Record Keeping Violation

Pulled (Back to Staff)

Proposed Resolution:

1. That the Business License # C 5674 BC, Matrix Pest and Termite Elimination be issued an Administrative Warning for violation of A.A.C. R4-29-307(B)(7) (Pesticide storage.)

6. Northwest Exterminating Co., Inc. - Case # 2001-338TAB 29
Termite Pre-treatment application Violation

Proposed Resolution:

1. That the Business License # C 4410 BCE, Northwest Exterminating be issued an Administrative Warning for violation of A.A.C. R4-29-402 (Chemicals.)

The above is proposed due to the applicator involved suffering from a medical condition (unknown at the time). Immediate corrective action to the site was performed.

7. Paul=s Pest & Termite Control - Case # 2001-304TAB 30
Late TARF=s

Pulled

Proposed Resolution:

The Complaint contains allegations of violations resulting from failure to pay late TARF fees.

All fees were paid as of March 8, 2002.

Recommendation to dismiss complaint.

*MOTION: To approve by Commissioner Peterson
Seconded by Commissioner Micuda*

VOTE: 6 - 0 Motion carried.

8. Phoenix Pest & Termite Control, Inc. - Case #s 96-047, 96-189, 2000-204, 2000-314, 2001-004, and 2001-038 TAB 31

Pulled

*MOTION: To approve by Commissioner Burrows
Seconded by Commissioner Micuda*

VOTE: 6 - 0 Motion carried.

9. Tucson Exterminating - Case # 2001-354 TAB 32
Wood Infestation Report AWIR@violation

Pulled

Proposed Resolution.

- 1. That the Business License # C 2218 BCE, Tucson Exterminating, be issued an Administrative Warning for violation of A.R.S. ' 32-2321 (B)(2).*
- 2. That the Qualifying Party, Sherman Holmes, Q.P.# 2039 BC, be issued an Administrative Warning for violation of A.R.S. ' 32-2321 (B)(2).*
- 3. That the Certified applicator, Russel Stewart Cert. #950895, be issued an Administrative Warning for violation of A.R.S. ' 32-2321 (B)(2).*
- 4. That the Certified applicator, Russel Stewart Cert. # 950895, be issued a civil penalty in the amount of \$500.00 for violation of A.R.S. ' 32-2321 (B)(2).*

*MOTION: To approve with addendum that R4-29-413(A)(12) is the violation by Commissioner Micuda.
Seconded by Commissioner Burrows*

VOTE: 6 - 0 Motion carried.

End of Consent Agenda

*MOTION: By Commissioner Burrows to accept Consent Agenda as read with the exception for those items pulled for discussion.
Seconded by Commissioner Micuda*

VOTE: 6 - 0 Motion carried.

VII. Decision and Recommended Order by Administrative Law Judge

1. Charlie=s Angels Pest Control - Case # 2001-165TAB 33

MOTION: To approve Finding of Fact Conclusion of Law by Commissioner Burrows

Seconded by Commissioner Peterson

VOTE: 6 - 0 Motion carried.

*MOTION: To accept Recommended Order by Commissioner Micuda
Seconded by Commissioner Peterson*

VOTE: 6 - 0 Motion carried.

2. Five Starr Termite & Pest Control - Case # 99-103 TAB 34

*MOTION: To accept Consent Agreement and Order by Commissioner Burrows
Seconded by Commissioner Peterson*

VOTE: 6 - 0 Motion carried.

3. Warren Dewey-Dwight Wellen - Case # 2000-315TAB 35

*MOTION: To approve Finding of Fact Conclusion of Law by Commissioner
Micuda
Seconded by Commissioner Burrows*

VOTE: 6 - 0 Motion carried.

*MOTION: To accept Recommended Order by Commissioner Micuda
Seconded by Commissioner Burrows*

VOTE: 6 - 0 Motion carried.

VIII. Complaints

1. Alliance Pest Management - Case # 3001-272TAB 36

*MOTION: To send to Administrative Hearing by Commissioner Micuda
Seconded by Commissioner Burrows*

VOTE: 6 - 0 Motion carried.

2. Burn Pest Elimination - Case # 2001-282TAB 37

MOTION: To send to Administrative Hearing by Commissioner Burrows

Seconded by Commissioner Peterson

VOTE: 6 - 0 Motion carried.

3. Canyon State Pest Control - Case # 2001-327 TAB 38

*MOTION: To send to Administrative Hearing by Commissioner Micuda
Seconded by Commissioner Peterson*

VOTE: 6 - 0 Motion carried.

4. Contractors Termite Control - Case # 2001-037TAB 39

*MOTION: To send to Administrative Hearing by Commissioner Burrows
Seconded by Commissioner Peterson*

VOTE: 6 - 0 Motion carried.

5. Randy Ray Severin - Case # 2001-241TAB 40

*MOTION: To send to Administrative Hearing by Commissioner Burrows
Seconded by Commissioner Micuda*

VOTE: 6 - 0 Motion carried.

6. SST Exterminators - Case # 2001-370 TAB 41

*MOTION: To send to Administrative Hearing by Commissioner Burrows
Seconded by Commissioner Micuda*

VOTE: 6 - 0 Motion carried.

7. Sunrise Pest Control - Case # 2002-039 TAB 42

*MOTION: To send to Administrative Hearing by Commissioner Micuda
Seconded by Commissioner Burrows*

VOTE: 6 - 0 Motion carried.

8. Uni-Tech Exterminating - Case # 2002-007 TAB 43

*MOTION: To dismiss by Commissioner Robinson
Seconded by Commissioner Peterson*

VOTE: 6 - 0 Motion carried.

9. University Termite & Pest Control - Case # 2002-002 TAB 44

*MOTION: To send to Administrative Hearing by Commissioner Burrows
Seconded by Commissioner Micuda*

VOTE: 6 - 0 Motion carried.

IX. Felony Applicants.

1. Bainter, Tracey TAB 45

Pull - No Attendance.

2. David, Kevin Lamar TAB 46

*MOTION: To approve by Commissioner Burrows
Seconded by Commissioner Micuda*

VOTE: 6 - 0 Motion carried.

3. Dettman, Jeffrey C. TAB 47

*MOTION: To approve by Commissioner Burrows
Seconded by Commissioner Micuda*

VOTE: 5 - 1 Motion carried.

4. Jacoby, Michael AaronTAB 48

*MOTION: To approve by Commissioner Burrows
Seconded by Commissioner Robinson*

VOTE: 4 - 2 Motion carried.

5. Yslas, Ramon Castillo TAB 49

*MOTION: To approve by Commissioner Burrows
Seconded by Commissioner Micuda*

VOTE: 6 - 0 Motion carried.

10. Case Status Report. TAB 50

Discussion by Dirk S. VandenBerg, Sr.

XI. CBT, Present Status and Future Plan TAB 51

Carl Martin - Addresses the brief legislative and regulatory impediments to Computer Based Testing which was sized down from last month.

Vice-Chairman Micuda - Concern is to the extent that staff has been looking at in-sourcing this and we haven't discussed this and that is why I wanted this on the Agenda. My personal opinion is that we should stay as far away as possible of in-sourcing and looking at the statute or the new act . We can either talk about it now because I was looking at the Act 2189 under 2304 (A) (11) there is language the Commission shall make all efforts to contract to private parties and the Legislature wants this out-sourced which is a State policy. I don't see why we should spend more time or money looking at in-sourcing.

Chairman Hartley - Jerry I guess you can address that - not spinning your wheels are we Astatus quo@where we left at the last meeting.

Jerome Davis - We are Astatus quo.@ HB 2189 includes the out-sourcing at that point we did have a back-up plan in case that contract defaulted, we are not proceeding on it.

Hugo Pulido - System is ready and in place if we need in the future.

Commissioner Robinson - If 2189 passes it does not hold us to go by Computer Based Testing, they just want us to move into that direction and the last computer based testing proposal that came forwarded, we voted on last month has nothing to do with qualifying party testing, it was strictly with certification, is that correct.

Chairman Hartley - I think that sneak in the Bill at the last minute by Barry Aarons the QP portion. Originally, it was certification and it stayed away from QP's. I don't know why

they did that at the last minute from what I heard Carl has been on top of this thing of the QP's.

Carl Martin - Senator Guenther by Arizona Pest Management Association snuck it into the bill.

Commissioner Fraker - I couldn't quite hear what you said regarding your position on outsourcing CBT.

Vice-Chairman Micuda - To the extent that there were no directions on Computer Based Testing that is the direction we are going in, it is just the matter of figuring how we are going to do it the right way. My impression has always been that we are going to out-source that and that is the way we ought to go and we shouldn't be looking to doing it in-house. We should not be in the business of Computer Based Testing to regulate the pest control business.

Chairman Hartley - What I would like to see them spend a lot of their time on and would be productive is on their questions. The out-source people aren't going to do anything with the questions. They are mechanically to deliver what we give.

Vice-Chairman Micuda - They have nothing to do with the questions. That is an issue that comes up all the time on the quality of the test.

Chairman Hartley - I would like to see efforts put into that area. Hugo another comment.

Hugo Pulido - We are 70% to 75 % complete with the questions. We have all the certification questions done, we are almost done with the QP portion. We have something to be evaluated, and to present, and to be reviewed. The other thing I would like to talk about to the Commissioners is there will be some time before we can get this thing vendorized. Right now this system is ready is there something you can consider to allowing the Commission to use the system which will vastly improve our operation with the things that we do now. It will facilitate our services. We are getting ready to spend \$2500.00 for a new Scranton machine because the one we have now is 16 years old, we can't get support or parts for it and it is old. I am suggesting that we put this computerized testing into effect.

Vice-Chairman Micuda - That is precisely my problem, I don't think we should be in the business of Computer Based Testing. What annoys me is that staff has gone ahead and dedicated I don't know how many resources, man hours, and money to go in the direction that this Commission has not even given their approval and we haven't even talked about it being done in-house. You put something on paper and gave it to us and that was the end of it, so my perspective is that you should not have gone to the next step at all that is our

purview to decide what direction we are going to go and how we are going to do it. I wouldn't mind seeing a report of how much money and man hours have been spent in going in this direction.

Hugo Pulido - That project I was very interested in because I took it as a learning project, I spent some time, but it was on my own time reading technology.

Vice-Chairman Micuda - I don't see how we can go in this direction when we have a bill on the verge of being signed.

Hugo Pulido - I fully agree with you, if we could use in the interim to facilitate the way we do things now.

Commissioner Robinson - I would like to make a comment here Hugo you said here you have gone over the questions and you are about 75% finished etc. In the last couple of months we have been talking about certifying tests in a way that protects our liabilities and so there is a lot more to the fact instead of scribbling out some questions, etc. and I don't understand what has to go on there, but the tests have to go through a certain process to be legally binding.

Hugo Pulido - The person that is actually working on generating the process is Dave Broadstreet and as he explained to me, he is taking all the questions strictly from the source in other words it is coming from the Trauman's Guide. If it is a law and rule question it is coming from the law and rule, so there is no gray area it is pretty concrete. Early stages of writing the tests and then they have to be valid.

Commissioner Robinson - So it is a step to present a company a certain amount of questions to be approved. Is that the first step that has to happen to validate the test questions.

Chairman Hartley - Carl would you address validation.

Carl Martin - The first step is to determine what the scope of practice is for people who need a license. Typically the industry does that by having a survey of some kind by asking those who are engaged in the practice of structural pest control what is it they do on a daily basis. Another way is to hire a bunch of people to follow applicators around to see and write down what they do. Once you get that base of activity those skills or knowledge a person has to have to do a job correctly from that 20 questions will deal with application technique maybe 30 will deal with knowledge of pesticides. Then you would develop a blue print knowledge of pesticides to meet requirements to validate tests. Then you would have a valid test.

Commissioner Robinson - So then we are going about it the wrong way then.

Carl Martin - No, I think we are doing two things here, I want to make that clear. There are some instruments we use to give people licensure and certification are not quite what we want them to be, we are revising those to make them in our scope the best they can be. It does not address the larger issue in regard to validation, I don't believe in most questions it is an all or a none thing, I think we are doing the best we can with what we got now. We will move forward with the direction of the Commission wants us to do, certainly with all of us here management Jerry and Barry are all for it for validating the examinations as a goal. We just simply have that as a goal or a priority and to spend the money on it and recognize that it costs money to do that.

Barry Levitch - Mr. Chairman and Commission Robinson we have addressed that in a report for testing validation to respond to Commissioner Micuda's inquiries. We have meet with Commissioner Peterson at the Department of Ag. as a joint venture, we are going to be moving in that direction as Carl articulated that is the next step. We have spent a most considerable amount of time especially Dave Broadstreet who is making the test better. The test validation is very costly and we will be moving in a joint venture with the Department of Ag.

Chairman Hartley - Addressing Commissioner Micuda's concerns this is kind of my take on it. You may of done some things to make internal testing better, but the goal is to do out-sourcing that's my take on it Kip. We don't want it to cost a lot of money, but if they are tweaking things that may make the test better, so we can out-source it that will be fine with me.

Vice-Chairman Micuda - That's fine with me, what I heard is doing Computer Based Testing in-house.

Chairman Hartley - I think they need to rephrase, I think they need to say we are using computers more functionally until we can get the out-sourcing.

Dirk S. VandenBerg, Sr. - Mr. Chairman, Commissioner Micuda as with investigations, writing complaints, we have done exactly the same thing in the last six months to put in more efficient ways with the materials that we currently have or lack of to the best of the ability for the betterment of the whole agency. We are not going out of way or lavish expenditures to take over or do any testing. What we are utilizing here to make this more efficient with what we have. As with any company, or agency, or department we are simply stream lining to alleviate any wasteful spending or waste man hour time.

Vice-Chairman Micuda - I appreciate that, I guess what I am interested in seeing how much has been utilized to go in the direction that has not been put on the Agenda that the

Commission needs to talk about and second to the extent purchases that have been made and assuming we are going to out-source this. In other words, are we out buying hardware then where does that put us if it is going to be out-sourced and second by doing this you made it a priority, one it is not up to the staff to make it a priority. This Commission sets the priorities and policies. So what has been sitting that probably could have been worked on in lieu what I thinking that has been done.

Barry Levitch - Mr. Chairman, Commissioner Micuda, and Commissioners what Mr. Pulido was talking about has not been sanctioned without the Commissions approval or by Jerry Davis and myself. Certainly, the Commission has that right and it will be deferred to them. The time that has been expended is business and development time that Jerry had authorized Hugo to do in the early stages of the Computer Based Testing process when we were trying to develop the system as I spoke to you about when we had our meeting in Tucson, so there has not been any capital invested. There has been some man hour time in terms of Mr. Pulido and he can put a price tag on the hours spent. There has been no other investment in terms of expenditures and to the point of the Scranton machine that will be a cost because we will need to replace to keep the system running until we do out-source. Because that machine is so dated, we cannot even get it serviced anymore and we have been holding back. We may have to spend a few thousand dollars and the development time Hugo spent and we would be happy to put a price on that time. No decisions made unless by Commission discretion.

Vice-Chairman Micuda - As long as it is that piece of particular equipment, we are already using and it is going to be needed regardless of what we will have to do in the future then buying a new one I don't have problems with that.

Hugo Pulido - Can I say one word Mr. Chairman there have been no monies spent for hardware or equipment. This was done for back-up. No additional equipment was purchased, we utilized old equipment from the Agency. There has been no expenditures on software.

Commissioner Peterson - Mr. Chairman, just a question are you looking at law at another method of taking a test is that what you are talking about. Or are you talking about law with people coming in and taking a test on a dummy terminal?

Hugo Pulido - You are looking at another method not pencil and paper. It would be computer based.

Commissioner Peterson - My follow-up question is you say your about 75% there how far along are you into getting that ready to roll.

Hugo Pulido- Just the questions?

Commissioner Peterson - No, the system.

Hugo Pulido - It has been done since the last Commission meeting.

Commission Peterson - So then it negates the need to have that Scranton isn't it?

Carl Martin - I feel I have to speak, I'm sorry, that decision has not been made by the Executive Management or Agency. There are issues other than the delivery of the tests whether or not that person takes the test the same way here or another location. How would we score tests from another location if it wasn't on the computer. Those things still have to be go through the Agency and then brought to the Commission for a decision. I think Commissioner Peterson you might just be a little bit ahead, we are not talking about pulling the trigger on anything computer base delivery of a test at this point.

Barry Levitch - I would like to answer that, we will not be doing it in-house. Hugo did that because in case the vendor defaults.

Dirk S. VandenBerg, Sr. - Mr. Chairman, Commissioners just as a review, the expenditure there isn't any aside from man hours to tweak an in-house as you term a house program. We have a hard copy testing currently, here Prescott, Tucson and two locations on the river (Kingman and Yuma) the questions are the only hard copy thing that has been revamped to be more efficient. There is no computerization, nor is there any intent to have any computerization at this point. Back-up plans have been worked on and developed on such as outlying area testing. I currently have an inspector driving and meeting another inspector half-way to pick-up tests to have them graded. This is an expenditure for fuel, mileage, the man hours to have an inspector do this, and brought back and processed. What we are trying to do is to minimize the costs, so that it is more efficient, so we can do our job which is to do inspections/investigation. I hope it clarified something here.

Scott Richardson - One question, it is sort of on the topic, but I have had a couple of phone calls in the last couple of weeks. Apparently, there was a situation a while ago that someone called and they could not call and get test results anymore. It sort of causes a burden on people especially if they are trying to get people certified. I don't know what the problem is or what is the situation, but I am getting a lot of telephone calls.

Pam Ulbrich - Chairman and Commissioners we don't give results over the phone because we don't know who is on the other end and anybody can call if they passed or failed. A lot of them do not want their employers to know that they failed, so they can come back and test again. We do send out letters giving them their results or they can actually come into the office and get those results.

Scott Richards - A qualified party has the right to know.

Blair Driggs - I don't think they have the right to know, but the need and the ability to know.

Chairman Hartley - Is that a right or a privilege to know Mr. Driggs.

Scott Richardson - It does cause scheduling problems if this person passed or certified. I am just getting a lot of telephone calls.

Chairman Hartley - Jerry would you discuss that with your staff in a way of accommodating without violating what we perceive to be a potential problem.

XII. Termite Treatments (Regulatory Requirements) TAB 52

Discussion by Chairman Hartley - I am the one who wanted on the Agenda the Termite Treatment Regulatory Requirements. In a nutshell, I wanted to see in one place and be able to talk to staff about companies in the State of Arizona who are starting to go off. Some companies not all companies are starting to go off into la la land in the way they treat for termites. The way they are going about is based on from our friends from the East coast, Florida, Kentucky, South Carolina and the State of Georgia is very concerned about this right now. In fact, they have become so concerned Georgia is doing TV advertising as well as written correspondence with consumers saying if people are approaching you and they want to do this termite work. What it boils down to is perimeter only treatments. That you need to call the Georgia regulatory body because they are not giving a complete termite job according to the label, or according to EPA, or the laws of the State of Georgia and where states have treatment laws in place and companies are in fact violating what I am trying to see is to predict the future. It is all ready coming to Arizona and we are going to have consumers up here in a year or two years form now about how they got scammed by companies that are no longer around. Arizona has treatment specifications, we have instructions on how we expect them to do post-construction work in this state and I hope that is being looked at by staff and inspectors in the field. This is high industry for fraud. I just wanted to see if there is any comment on this.

Jerome Davis - Mr. Chairman, I received two or three e-mails from the East coast. Some of the companies are asking the consumer to sign off on the treatment, and what are the requirements if any, and what is the State or Arizona treatment phase.

Chairman Hartley - I just wanted to throw it up for general conversation and comment it is something that will come up in the future, I can guarantee.

Vice-Chairman Micuda - One thing I would like to see to be more effective is that we could be identifying issues with respect to the public and I don't know what they are, but to the extent if it is this kind of concern, or an on-going concern, patterns of conduct, whatever. We can do public service announcements, it does not cost us anything and it is easy to do, it takes 10 minutes to draft one because I have done it and most of the radio stations are good about putting this on the air. This is something I mentioned before, it is time for us to do it. It is good for the industry, public and the Commission.

XIII. TARP Semi-Annual ReportTAB 53

Discussion by Dirk S. Vandenberg, Sr. - Mr. Chairman and Commissioners you have copies of the letters, and summary, and report.

Chairman Hartley - General questions with companies on TARP

Dirk S. Vandenberg, Sr. - We are doing well and we have one full time inspector and we will have a second one who will be spending 60% of his time auditing companies and possibly a third in the next six months full time. It is going very well, Ms. Ulbrich and I are working very closely in tracking the TARP, we will forward any violations and began any investigations if companies are not turning in their TARP.

Chairman Hartley - I think the message is out to the industry that the Commission is very serious on TARP and I've seen a huge improvement and I don't know if some of the other Commissioners have noticed that. Hopefully, it will get better and people will full fill their obligations, so any questions.

XIV. Enforcement Response Program - MATRIX (Revised)TAB 54

Dirk S. Vandenberg, Sr. - The Enforcement Response Program Matrix has been revised. We have submitted copies of the instructions and the Matrix for your perusal. As I explained earlier last month at the meeting there are a couple of requirements here that we are trying a six point Matrix system. There are two parts with the Matrix and SOP, it is the overall plan to become in-line with EPA as well as balance with the Commission and State Statutory Regulations. We have eliminated the discretionary that the agency in determining the penalty for a violation. We have been getting into trouble with that and we were not on a

consist basis the same penalty for the same problem. We have tightened it up, we have the minimal for Administrative warning which was addressed earlier.

Vice-Chairman Micuda - My review of it, I like what you have done and it looks great. Have the Commissioners look at it and get the EPA feedback.

Dirk S. VandenBerg, Sr. - Mr. Chairman and Commissioner Micuda we have forwarded a copy of this along with the SOP on to Al Demorest at the EPA for his review, unfortunately, he is on vacation for 30 days. We also forwarded a copy to Carlton Lane from Region 4 EPA, he has reviewed it and it is a very good base to go on, he also complimented us on the SOP and said it is a good base for the Inspection/Investigation Manual which will hopefully be done within the next 30 days. Then we will be in compliance.

Blair Driggs - Mr. Chairman and Commissioners I have had a discussion with Dirk in regards to this and to the Matrix. The only caution from a legal stand point to be up front with and you have a couple of attorneys who represent clients in the industry. The Matrix is used as a tool, the more tighter you get the Matrix you have the legislature and the public that will say why isn't it substantive policy and you need to go through procedure to get that. The end result of that, it is a substantive policy statement by this Commission then why aren't you making it a Rule. So that is why I let staff know the more tighter you draw things down the legislature and the public are entitled to know under the laws you have to upgrade that into a certain situation. If you are absolutely going to rely upon it point blank this is what you get for this and this is what you get for that violation you should be required to upgrade in the future not just as a Matrix as a tool, but as a form of a Rule.

Dirk S. VandenBerg, Sr. - Mr. Chairman and Commissioner this is a tool@the discretionary value we've taken up ourselves belongs to you, we present it to you, if it doesn't flow, we will fix it.

Scott Richardson - That is precisely the problem I have, if there is no discretion to negotiate with the staff to try to do positive things to keep violations from occurring in the future, I think that is what it is all about which we should be as an industry and the Commission then what is the point of having Settlement Conferences.

Lisa Gervase - My legal problem with this, I think the Court of Appeals recently just cited a case where an Agency is going to be relying on something it is a rule, yet to make it a rule you cannot rely on it, if it is not a rule.

Scott Richardson - Let say it does not have to be a Rule, lets give staff and the Commission has the authority, but lets give staff a little bit of wiggle room to try to do some good things to protect the public on an on-going forward basis.

Dirk S. VandenBerg, Sr. - Mr. Chairman and Commissioners, I want to restate that this is a tool and a guideline.

Scott Richardson - Perhaps this is the problem for not having seen it and the discretion has been taken out of our hands.

Dirk S. VandenBerg, Sr. - Explained that the discretion meaning one time for one company and that same violation for another company and they do not receive the same penalty, instead we are dismissing, but the next time for another company the penalty is \$500.00. With that type of inconsistency we are getting fired on our case writing, investigations, and settlements by EPA. Or we get fired on by the Commission because we didn't do at least an Administrative warning where with someone else we put a dismissal.

Vice-Chairman Micuda - I think part of the concern and the dangers is you treat all the cases the same as us attorneys like to say every case is different. There are factors as mitigating and aggravating factors that give the finder of facts some range within to work. The way I am seeing the Matrix being used is helping staff to give them a starting point and from there you look at things, my definition of a really good attorney who gets outside the box or anybody who can come up with things to resolve this that are created. There is a danger again whether its EPA or anybody else by looking at numbers and saying that cases are being treated differently. Maybe we need to do a better job in our documentation or whatever and stating why this case was handled the way it was. Well here are two cases with the same violation, but they were treated differently that means we were inconsistent and that is unfair. Because it may not of been inconsistent at all and every case is different. There may very well be legitimate reasons why this case was dismissed and the other case we did a \$500.00 fine. The issue of causation came up earlier, you have an alleged violation and a potential violation, but if you've got a big hole in your case and proving causation you have no case, so I think we have to be careful when lumping all this stuff together and looking at it and what this means. I think it's a starting point to be creative and I thought the Log Book idea is great. Great tool for staff and it is a starting point and from here we need to have an articulated bases for diverting up and down from this starting point.

Chairman Hartley - I think if you document and articulate, so there can't be any allegations of favoritism.

Vice-Chairman Micuda - Maybe on the Agenda for Settlements to the extent there is a particular violation for diversion from the Matrix maybe there ought to be an explanation there the staff recommends this for the reason that that is a little more work and sometimes it is hard to do, but if you want to cover yourselves from being fired upon by us,

or counsel, or EPA the best way to do it is to tell them exactly why you are recommending what you recommended.

Dirk S. VandenBerg, Sr. - Mr. Chairman and Commissioner Micuda that is the intent of this we will do that, but we need a guideline that will balance State, EPA, Commission members, and the industry, all this will be fair and equitable for everybody.

Chairman Hartley - I will agree it is a good starting point as you say Commission Micuda when we finally come out from the other end of these cases, I am sure all of these different angles it is not going to be perceived as being fair and equitable.

Chairman Hartley was looking for direction from Blair Driggs on how to proceed with this document, since it was a draft.

Dirk S. VandenBerg, Sr. - Mr. Chairman, Commissioners I present it to you and if you approve, it will be the final.

*MOTION: To approve the use of this Enforcement Response Program as a tool in figuring penalties by Commissioner Peterson.
Seconded by Commissioner Micuda*

VOTE: 6 - 0 Motion carried.

Comments from audience: Would like to know if Matrix will be on the Internet. Chairman Hartley said it is public record.

Commissioner Peterson - Mr. Chairman just to follow-up with that again looking at this just as a tool to use in this situation, I think what needs to go on from here is a changing of your Rules. It will not be as detailed as it is here, you will have to look at the general categories and general functions type things and then it will allow you the freedom to do these odd things. At that point when it goes into Rules it may be a little bit looser, but it may be somewhat tighter to get to that point because this will become substantive policy and there will have to be Rules. I agree you don't want to adopt Rules that look like this because you are then stuck and when you get these neat ideas when somebody is not in compliance which is making sure that the consumer is serviced correctly you don't want it that way. As a starting point this is good.

Commissioner Burrows - Put this out on the net, you need to put some type of statement that this is a tool. People need to understand that this is a tool and guidelines for us to use.

Vice-Chairman Micuda - The whole idea having this is to lend a little more certainty to everybody in the process that this is something that could likely happen, not guaranteed, but the range of what could happen is limited and there is some reason for doing that to the extent that something else happens there it is going to be an explanation for that. I think we need to be transparent about this and it ought to be on the web everybody ought to get it if they want it and there should be statements along with it conveying part of this discussion and maybe Blair can draft that. About what our intent is in using this, it's a place to start. Dirk S. Vandenberg, Sr. - Mr. Chairman, Commissioners during the Settlement Conference the Matrix that we have been using currently is always explained. It is a step-by-step process of how we came to the conclusion.

XV. Standard Operating Procedures S.O.P.TAB 55

Discussion by Dirk S. Vandenberg, Sr. - Mr. Chairman and Commissioners the Standards Operating Procedures we have forwarded a copy to EPA, Region 4, as well as Region 9 for their review. This is also for your review on what we plan on basing our Inspection/Investigation Manual on, we are currently working on that right now, but we need these guidelines in place to expand it out. So we can set procedures and guidelines they are wanting procedures according to their guidelines as well State.

Vice-Chairman Micuda - Dirk have you received any feed back on those?

Dirk S. Vandenberg, Sr. - Yes, as I stated earlier Al Demorest is on vacation and he had taken a quick glance at them. Received an e-mail from Carlton Lane, Region 4, he was here teaching classes and mock inspections, he said it was a good basic, if it is a stand alone, no, which it is not a stand alone. This is not our manual this is the basis for it, but as a stand alone it is real good. At that point, we will have satisfied the requirements and as long as we are consistent on how we do inspections, we have a new inspection form that shows all the statutes and rules.

Chairman Hartley - Do you need anything from us on this?

Dirk S. Vandenberg - Just to review it.

XVI. Suspension of Business License/Qualifying Party for License Non-Renewals TAB 56

Discussion by Pam Ulbrih Business Licenses and Qualifying Party Licenses that were not renewed.

Blair Driggs - Under the Statute it allows you the Commission to take action to suspend Business Licenses and Qualifying Party Licenses for failure to pay Non-Renewal without a hearing by not having to go through an Administrative Hearing. Because of the way the statute is written if in another year if nothing else has happened it will come back to you for revocation it is 32-2331 (F).

*MOTION: Commissioner Peterson moves that we put on suspension the list of Business Licenses/Qualifying Party Licenses for one year.
Seconded by Commissioner Burrows*

VOTE: 6 - 0 Motion carried.

Blair Driggs - To read the list of names for the record.

*Dirk S. Vandenberg, Sr. - **Read List of Suspension of Business License/Qualifying Party for License Non-Renewal.** Company Name: Alieve Pest Control, Instar, Westin La Paloma, Assured Environments, Tubac Ranch Properties, Osmose Inc., Terry's Pest Control. Qualifying Party Name: Jay Allen, Brian R. Bowles, Kevin S. Phillips, David L. Gayle, Dave Russell, Daniel Funk, and Terry Herberg.*

Chairman Hartley - Do we ever follow-up with these companies like Westin La Paloma do we check if they are still operating, or doing something, or did they make some other arrangements.

Dirk S. Vandenberg, Sr. - The inspection team does go by the companies to follow-up to see if they are still operating and they are sent letters.

XVII. Legislative Update

Discussion by Carl Martin on House Bills 1164, 2188, 2189. Both House Bills 2188 and 2189 passed in the Senate.

Commissioner Robinson - Carl would you cover go over the Rules from our Tuesday night meeting.

Carl Martin - We progressed along the track in rewriting our rules. Once of the decisions we made early on was to rewrite the rule according to current statute. We came back to the Commission a couple of months ago and said the current statutes are whacked, so that is why we came up with House Bill 2188 which made a lot of fixes.

XVIII. Executive Director=s Report

Discussion by Jerome Davie - Jerry will be in San Francisco on June 18 and 19 negotiating the State Plan.

Adjournment

*MOTION: To adjourn by Commissioner Burrows
Seconded by Commissioner Micuda*

VOTE: 6 - 0 Motion carried.